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Ex Parte Notice

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Implementation of the Cable Television Consumer Protection and Competition Act of 1992; Development of Competition and Diversity in Video Programming and Distribution: Section 628(c) of the Communications Act; Sunset of the Exclusive Contract Prohibition, CS Docket No. 01-290

Dear Ms. Dortch:

On June 3, 2002, James R. Coltharp of Comcast Corporation and I met with Susanna Zwerling, Legal Advisor to Commissioner Copps to discuss the above-captioned proceeding. We reiterated various points previously presented on the record in Comcast's comments and reply comments. In particular, we emphasized that:

- The 1992 Act's prohibition of exclusive contracts for certain programming represents a significant departure from the general rule that prevails in most media (and throughout much of the rest of the economy). Indeed, exclusivity is common to distribution models for most media, including newspapers and magazines, radio, broadcast television, motion pictures, and new media.
- The 1992 Act's exclusivity provision was explicitly intended to be transitional; Congress hoped that the marketplace would change in ways that would make the prohibition unnecessary. Over the intervening decade, the marketplace has indeed changed dramatically. Among the most significant changes are the success of DBS (0 customers in 1992; 18 million today) and the vast increase in both the number of programming networks and the channel capacity of MVPD platforms.
- Retaining an exclusivity prohibition for cable operators seems especially perverse when no comparable prohibition applies to DirecTV and EchoStar. Those companies exceed the vast majority of cable companies in size and possibly all cable companies in rate of growth.

- Comcast hopes that the order in this proceeding will accurately reflect Comcast's practices in licensing Comcast SportsNet. Although Comcast has been careful to provide accurate information to the Commission about this, certain other parties have repeatedly created confusion and misperceptions regarding Comcast's practices. Pertinent information on this topic is summarized in the attached document, a copy of which was provided to Ms. Zwerling.
- The relevant statutory provision cannot properly be read to permit the Commission to fashion an exclusivity prohibition that sweeps more broadly than the prohibition enacted by Congress.

Pursuant to section 1.1206(b)(2) of the Commission's rules, a single copy of this letter is being filed through the Commission's electronic comment filing system. Please let me know if you have any questions.

Sincerely,

James L. Casserly

Enclosure

Comcast SportsNet Access Summary

The Commission Has Consistently Held that Comcast SportsNet Is Not Subject to the Program Access Rules, Is Not in Violation of the Commission's Program Access Rules, and Has Not Engaged in Improper Evasion of the Rules.

- The Federal Communications Commission has had multiple occasions to consider the status of Comcast SportNet under the program access rules. Each time it found SportsNet's distribution arrangements complied fully with the statute and the Commission's rules.
- DirecTV and EchoStar complained in 1997 that Comcast SportsNet's decision not to sell the service to them was an evasion of the program access rules made possible by SportsNet's terrestrial distribution.
- The FCC's Cable Services Bureau and the Commission itself have found SportsNet's distribution legitimate and lawful, because:
 - (1) SportsNet was created as a brand new service, and,
 - (2) The decision to distribute it terrestrially rather than by satellite was a legitimate decision based upon lower costs, greater convenience, and the availability of an existing terrestrial distribution system.
- Other regional programming services commonly use terrestrial distribution facilities for the same reasons: NewsChannel 8 in the Washington, D.C. market, New York 1 News in the New York City market, and Pittsburgh Cable News Channel in the Pittsburgh market all are regional, terrestrial services.
- The FCC and the Cable Bureau also specifically found that:
 - (1) SportsNet "was not a service that was moved from satellite to terrestrial distribution."
 - (2) The decision to deliver SportsNet terrestrially did "not amount to an attempt to evade" the program access rules.
 - (3) There is no reason to incur the higher costs associated with satellite distribution which is better suited for national audiences.
 - (4) SportsNet distribution practices were not "unfair" under the program access rules.

Other Important Considerations:

- Comcast returned a substantial number of games of the Flyers and 76ers to free over-the-air television in Philadelphia (under a previous owner, the games had been removed completely from over-the-air TV).

- Many games of Philadelphia sports teams are available to DirecTV and EchoStar customers, through arrangements with local broadcasters or the leagues' national sports packages.
- Despite the passage of SHVIA in 1999, neither DirecTV nor EchoStar chose to carry the local Philadelphia broadcast station that carries dozens of games of the three major local sports teams until they were required to by law.
- DirecTV also carries its own exclusive sports programming packages, including but not limited to "NFL Sunday Ticket," which is not available to any cable subscriber.
- The Comcast SportsNet service was created as a basic cable service. The dominant regional sports channel in the Philadelphia market, PRISM, had been a premium (or pay) service at about \$12/month.
- Comcast SportsNet has dramatically improved the quality of Philadelphia sports coverage, thanks to Comcast's large investments, has received several awards for its programming and service to the Philadelphia community.
- Comcast SportsNet Washington/Baltimore was created as, and operates as, a satellite-delivered service subject to the program access rules.

Comcast SportsNet – Dispelling the Myths About Terrestrial Distribution in Philadelphia

Certain parties persist in repeating several myths about Comcast SportsNet, notwithstanding Comcast's repeated clarification of the record. We address those here in summary form.

Myth: Comcast SportsNet has been withheld from Comcast Cable's terrestrial competitors in Philadelphia.

Fact: That is false. Comcast SportsNet has at all times been available to Comcast's terrestrial competitors, including cable overbuilders, OVS providers, SMATVs, and MMDS companies. RCN – which repeats this myth most persistently -- has had access to – and has carried -- Comcast SportsNet continuously since its inception and carries it today.

Myth: RCN has received shorter carriage terms than other distributors.

Fact: That is false. RCN has been offered the *same* contract terms (including price and duration) as every other affiliate, including Comcast Cable systems. Last October, RCN was offered a five-year contract, which it has chosen not to sign, even though approximately a dozen other parties have signed it. Even though RCN has not signed a carriage agreement, Comcast SportsNet continues to be carried by RCN.

Myth: The program access rules helped RCN secure access to Comcast SportsNet.

Fact: That is false. RCN did not approach Comcast SportsNet about carriage of the service in the Philadelphia area until *after* the Cable Services Bureau had decided the DirecTV and EchoStar complaints, which held that SportsNet was *not* subject to the program access requirement. Comcast

nonetheless made SportsNet available to RCN despite the absence of any legal compulsion to do so. The existence of the program access rule has nothing to do with Comcast SportsNet's availability to RCN.

Myth: There is a trend toward terrestrial distribution of video programming that could disadvantage competitors to cable if they cannot obtain the programming.

Fact: The relative economics of satellite versus terrestrial distribution have not fundamentally changed. Terrestrial distribution makes sense as to a very limited number of video programming services (e.g., local or regional services such as Comcast SportsNet, cn8), but satellite distribution is certain to remain the preferred mechanism for distributing other programming services (e.g., E!, style., QVC) to nationwide audiences for the foreseeable future. To the extent that terrestrial distribution facilitates the creation of new local and regional programming, including news and public affairs, that is demonstrably beneficial to consumers, not a basis for concerns about unfair competition.

Myth: Lack of access to Comcast SportsNet has hindered DBS companies from competing in Philadelphia.

Fact: The numbers show otherwise. DBS penetration in the Philadelphia TV market has grown over 200% over the past three years. This is the third fastest growth rate of any of the top 39 DMAs. Moreover, EchoStar and DirecTV chose *not* to carry the signal of a Philadelphia broadcast TV station that airs many games of the Philadelphia teams until such carriage was required by law.